IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5105 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 No

DEEPAK P POTDAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5105 of 1997

MR DG CHAUHAN for Petitioner No. 1

MR ND GOHIL APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/08/2002

C.A.V. JUDGEMENT

1. By this petition under Section 482 of the Code of

Criminal Procedure ('the Cr.P.C.' for short), the petitioner, an employee of the respondent No.2 (employer/respondent), has prayed to quash the proceedings of Criminal Case No.1609 of 1996 registered pursuant to Inquiry Case No.44 of 1996 based upon the private complaint of the respondent. After issuance of Rule and grant of interim relief staying further proceedings of the criminal case, none appears to have remained present for the respondent despite service; nor any affidavit-in-reply disputing any of the averments of the petitioner is filed.

2. The gist of the complaint is that the petitioner was employed as a Senior Manager (Processing) under a written agreement which, inter alia, stipulated that the petitioner would serve the respondent for a minimum period of three years, he may be sent abroad for training and in case of his resignation or abandonment of job within three years after the training abroad, he would be required to repay the amounts spent on his training abroad. The petitioner had joined the service on 9.7.1994, he was sent abroad for training on 23.9.1995, returned on 12.10.1995 after expenses by the company of Rs.1,35,481/- and resumed on 13.10.1995. He had thereafter since 13.10.1995 ceased to attend on the ground of his going away to Aurangabad on account of accidental death of his mother-in-law and brother-in-law. Then, on 17.1.1996, he resigned and joined another company before completion of three years of service in violation and breach of the terms of the agreement. On this basis, it was alleged in the complaint that the petitioner had committed the offences punishable under Sections 406 and 418 of the Indian Penal Code ('the IPC' for short) and, after exchange of notices, a complaint for criminal prosecution was filed on 6.7.1996. The complainant appears to have been examined at Exh.4 and the deposition clearly reveals that at the time of sending the petitioner abroad a condition was imposed upon him to serve for three years after the training and that a demand for the amounts spent on his training was made but the petitioner having failed to pay, the complaint was filed.

3. The following conditions of the original service agreement, a copy of which is annexed at Annexure-A to the petition, are relevant:-

"8. In the event of the employee leaving, abandoning or resigning from the service of the employer in breach of the terms of the agreement before expiry of the said period of three years,

he shall not directly or indirectly engage in or carry on his own business or in partnership with others the business at present being carried on by the employer and he shall not serve in any capacity whatsoever or be associated with any person, firm or company carrying on such or substantially similar business for the remaining part of the said period and in addition pay to the employer, as liquidate damages an amount equal to the salary the employee would have received during the period of three months thereafter and shall further reimburse to the employer such amount that the employer might have spent on the employee's training including the emoluments paid to him during the training."

"13. The employee will also be required to sign at the time of departure for foreign tour for training purpose surety/indemnity bond for paying to employer the expenses on training etc. if he leaves the service before 3 (three) years from completion of training."

"14. That the contract of service can be terminated during the contracted period of three years by either party by giving three months notice or by paying three months salary in lieu of notice."

It is nowhere even alleged that the surety/indemnity bond envisaged in the above Clause 13 was ever executed. It is also not even alleged in the complaint or in the deposition that the petitioner had joined the service of other company before completion of the total minimum period of three years from the date of joining the service of the respondent. Therefore, the only material allegation in the complaint, not substantiated even in the deposition of the complainant or otherwise, that remained was that after creating a trust by entering into the service agreement, the petitioner had caused the respondent the expenses on training abroad and committed breach of trust and cheating by resigning from the job.

4. Criminal Breach of Trust is defined in Section 405 of the IPC as under:-

S.405 Criminal Breach of Trust -
Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or

disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

The word "dishonestly" is defined in Section 24 of the IPC as under:

"S.24 Dishonestly-
Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

And, the kind of cheating made punishable under Section 418 is defined in Section 415 of the IPC as under:-

"S.415 Cheating-
Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property, is said to "cheat".

The word "fraudulently" is defined in Section 25 of the IPC as under:-

"S.25 Fraudulently-
A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

5. In the facts of the present case, the essential ingredients of the above offences, such as entrustment with any property, misappropriation or conversion to one's own use of that property or use or disposal of such property dishonestly or in violation of any legal contract as also intention to defraud or intention of causing wrongful gain or loss are absolutely absent even in the allegations on which the complaint is based. That fact lends credence to the allegations of the petitioner that the complaint has been filed with an intention to harass the petitioner with malicious intention by abusing

the process of law and that the dispute between the parties was purely a civil dispute arising out of alleged breach of service agreement. It is true, as submitted by the learned Additional Public Prosecutor, that the power of quashing criminal proceeding should be exercised very sparingly with circumspection and only in the rarest or rare cases. However, as held by the Apex Court in the landmark judgment of STATE OF HARYANA v. BHAJAN LAL [1992 Suppl.(1) SCC 335], where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused or where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, the special power under Section 482 of the Cr.P.C. could be exercised to prevent abuse of the process of the Court and to secure the ends of justice. It is also recently held by the Apex Court in G.SAGAR SURI v. STATE OF U.P. [(2000) 2 SCC 636] that if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence, the jurisdiction of this Curt under Section 482 of the Cr.P.C. has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

6. In the facts of this case, obviously, when none of the essential ingredients of the offences alleged against the petitioner were disclosed either in the complaint or during deposition of the complainant, the further proceeding in the criminal case would amount to abuse of the process of the Court and result into unnecessary harassment. Therefore, this is a fit case in which the extraordinary powers of this Court under Section 482 of the Cr.P.C. are required to be exercised.

Accordingly, the proceedings of Criminal Case No.1609 of 1996 and the Inquiry Case No.44 of 1996 pending before the learned Judicial Magistrate, First Class, Sanand are hereby quashed. Rule is made absolute with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)